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No. 87-1305

In the Supreme Court of the United States

OCTOBER TERM, 1987

KOONS FORD OF ANNAPOLIS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

ROSEMARY M. COLLYER
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel
National Labor Relations Board
Washington, D.C. 20570

QUESTION PRESENTED

Whether, in the circumstances of this case, the court of appeals properly enforced the bargaining order issued by the National Labor Relations Board without requiring the Board to reopen the record so that petitioner could adduce evidence of post-hearing employee turnover and changes in ownership and management.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A6) is reported at 833 F.2d 310 (Table). The decision and order of the National Labor Relations Board, including the findings and recommendations of the administrative law judge (Pet. App. A30-A45, A46-A133), are reported at 282 N.L.R.B. No. 88.

JURISDICTION

The judgment of the court of appeals was entered on October 28, 1987. A timely petition for rehearing was denied on December 11, 1987 (Pet. App. A136). The petition for a writ of certiorari was filed on February 4, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In November 1982, District 65, United Automobile, Aerospace and Agricultural Implement Workers of America (the Union), began an organizational campaign among petitioner's service department employees (Pet. App. A58). By mid-December 1982, the Union had obtained authorization cards from at least 38 of the 66 unit employees (*id.* at A39). On petition by the Union, the National Labor Relations Board scheduled a representation election for January 12, 1983 (*id.* at A118).

Petitioner's officials, however, learned of the Union's organizational drive and, as a consequence, on approximately 26 occasions between mid-November 1982 and January 12, 1983, "either threatened employees with plant closure, discharge, and layoff, more onerous working conditions and stricter work rules leading to the discharge of employees, and loss of privileges and benefits; interrogated employees concerning their union sympathies and the organization campaign; or unlawfully solicited employees to campaign against the Union" (Pet. App. A34-A35; see also *id.* at A72-A95). Specifically, petitioner's President, John Koons Jr., announced to an employee whom he was interrogating about the Union that "he didn't need the dealership and he would close it down and turn it into an apartment building or an office building" (*id.* at A35, A76); moreover, he told several other employees that he did not need the dealership and "could close the doors and move to Florida and that life would go on without Koons Ford" (*id.* at A35, A75-A76). Petitioner's Service Department Manager, Ned Tomarchio, in turn told an employee that President Koons could easily close down the dealership and warned two mechanics that unionization would mean that employees could be fired or otherwise disciplined for arriving late to

work, for making unsatisfactory repairs, or for requesting additional time to complete a job (*id.* at A35-A36, A85-A88). Likewise, petitioner's Make-Ready Manager, Irv Sherbert, warned two mechanic's helpers that employees would receive more severe discipline if the Union was selected as their collective bargaining representative, with the result that employees could be fired for a single misstep (*id.* at A36, A80); he also told the two least senior employees in his department that they would be laid off in the event of unionization (*id.* at A36, A78). Tomarchino, Sherbert, and General Manager Ronald Hendrick similarly threatened small groups of employees that valued employee privileges would be taken away if the employees elected to unionize (*id.* at A36, A83, A89-A90, A91-A95). Finally, on January 6, 1983, just six days before the representation election, petitioner increased the wages of its body-shop employees—by granting their long-standing demand that their compensation formula be returned to the system that had been in effect prior to April 1982—and gave pay increases, averaging between 25 and 60 cents per hour, to 15 used car, parts, and make-ready department employees (*id.* at A36-A37, A97-A103, A107-A118).

The Union lost the January 12, 1983 election, with 27 employees voting in its favor, and 39 employees voting against it (Pet. App. A47). It then filed unfair labor practice charges and objections to the election with the Board, contending that petitioner's pre-election misconduct had precluded a fair election (*id.* at A47-A48). In response to these charges, the General Counsel issued a complaint against petitioner (*id.* at A48).

2. After a hearing, an administrative law judge (ALJ) held that, by engaging in the aforementioned acts, petitioner had violated Sections 8(a)(1), (a)(3), and (a)(5) of the National Labor Relations Act, 29 U.S.C. 158(a)(1), (a)(3)

and (a)(5) (Pet. App. A46-A130). As a remedy, the ALJ recommended: (a) that petitioner be ordered to cease and desist from the aforementioned acts; (b) that the results of the January 12, 1983 election be set aside; and (c) that petitioner be ordered to recognize and bargain with the Union as the representative of the service department employees (*id.* at A126-A130).

In recommending that a bargaining order issue, the ALJ noted both that "[t]he applicable standard is set forth in the landmark case of *N.L.R.B.* v. *Gissel Packing Company,* 395 U.S. 575, 613-615 (1969)," and that, under this standard, a bargaining order may issue where a union has at one point enjoyed majority support and the employer's unfair labor practices have rendered the possibility of conducting a fair rerun election too slight (Pet. App. A121, A122). The ALJ then found that petitioner "ha[d] engaged in a pattern of unremedied unfair labor practices which effectively destroyed the conditions [necessary] for a free and fair election, that those conditions probably cannot and will not be restored at any time in the foreseeable future, and that therefore a bargaining order is warranted, based on the Union's majority status as of November 23 and 24" (*id.* at A123). The ALJ explained (*id.* at A123-A124 (footnotes omitted)):

> The present case presents an almost textbook example of the 'fist inside the velvet glove.' *N.L.R.B.* v. *Exchange Parts,* 375 U.S. 405, 409 (1964). [Petitioner] through its supervisory personnel repeatedly hammered home the theme that unionization would *per se* result in the loss of a wide range of privileges and benefits which were important to the employees, e.g., job security, employer assistance, access to management, hobby night, working on cars outside the job, parts discount, opportunity for schooling advance-

> ment, drinking beer after work, and the annual Christmas party. These threats for all practical purposes nullified [petitioner's] belated assertion that it would bargain in good faith. Moreover the employees were well aware that retention of some of these privileges and benefits were dependent on employer good will or other subjective or variable factors within [petitioner's] control, e.g., the extent to which the service manager might grant more time to a mechanic on a flat rate job. Therefore, it is unlikely that the posting of a Board notice (and that essentially is all that a conventional Board order could provide in this case) would offer much assurance to the employees. * * * Most serious, however, were the pay increases granted shortly before the election. In these cases, * * * [e]ssentially all the Board can do is to tell the employer not to do it again. * * * The impact of such actions, coupled with [petitioner's] unlawful threats, cannot easily be forgotten. * * *

The ALJ added (*id.* at A125) that "neither the passage of time nor employee turnover is likely to result in conditions which would allow uncoerced employee choice in a free and fair election," noting that (*id.* at A125-A126):

> [Petitioner] presented evidence that as of the close of the hearing (October 18, 1983), 24 of the 66 employees in the unit as of January 10 were no longer employed by [petitioner], and one was no longer in the unit. The evidence indicates that there is substantial turnover among [petitioner's] younger, unskilled employees, e.g., porters, helpers and make-ready employees. However the evidence also indicates that there is much greater stability at higher levels of progression, particularly among the line mechanics and those on commission. * * * These employees included

> the principal union adherents and employees who were direct targets of [petitioner's] unfair labor practices. * * *

Accordingly, the ALJ concluded that "it will be a long time before the 1982-83 election campaign is forgotten at the Company and before the effects of the Company's unlawful conduct can be dissipated" (*id.* at A126).

3. The Board affirmed the ALJ's decision and adopted, with minor modifications not material here, his recommended order (Pet. App. A30-A45). The Board noted that "[b]oth the courts and the Board have long recognized that threats of job loss (i.e., plant closure, discharge, and layoff) because of union activity are among the most flagrant interference with Section 7 rights and are more likely to destroy election conditions for a lengthier period of time than other unfair labor practices" (*id.* at A37-A38) (footnote omitted)). It then determined that "the natural and likely result of the threats found here was to reinforce the employees' fear that they would lose employment if they persisted in their union activity," particularly since "these violations were commited by Koons, the [petitioner's] top official, and two department managers of the unit employees" (*id.* at A38). The Board described the wage increases awarded to 24 unit employees six days before the election as "an equally serious violation" (*ibid.*), noting that "such conduct must, of necessity, have a strong coercive effect on the employees' freedom of choice, serving as it does to eliminate, by unlawful means and tactics, the very reason for a union's existence" (*id.* at A38-A39 (footnote omitted)), and that "[w]age increases in particular have a potential long-lasting effect, since the Board's traditional remedies do not require [petitioner] to withdraw the benefits from the employees" (*id.* at A39 (footnote omitted)). Finally, the Board found that petitioner's "careful orchestration and general campaign to

destroy employee support for the Union" resulted in a "clear dissipation of union support during the period of [petitioner's] most egregious violations" (*ibid.*) and that "the inhibitive effects of these unfair labor practices are likely to persist despite a substantial level of turnover and concomitant passage of time" (*id.* at A40).

In this latter regard, the Board noted that "a substantial portion of the turnover occurred among [petitioner's] younger less skilled employees, while many of the older more skilled employees, who were the direct targets of many of the threats, are still employed" (Pet. App. A40). Moreover, "[i]n light of the extensive and repetitive nature of the violations, in particular the threats engaged in at general department meetings," the Board was unwilling to "assume that other employees were unaffected" (*id.* at A41). It concluded that "[t]he continued presence of these employees creates a potential that the inhibitive effect of the unfair labor practices remain, preventing the possibility of a fair election" (*ibid.*). Finally, it refused to reopen the record so that petitioner might adduce evidence of post-hearing turnover in employees and changes in ownership and management, including the transfer of ownership and the presidency to Joseph Koons, finding that "the evidence sought to be adduced would not require a different result" (*id.* at A40 n.18).

4. In an unpublished per curiam opinion, the court of appeals enforced the Board's order (Pet. App. A1-A6). It noted petitioner's contention that the Board had erred by failing to reopen the record in this case to receive petitioner's evidence concerning employee turnover and changes in ownership and management (*id.* at A4). It similarly noted the Board's contention that it was "not required to reopen the record to consider post-hearing evidence of changed circumstances" and that, in any

event, it "actually *did* consider this evidence" (*id.* at A5 (emphasis in original)). But the court concluded (*ibid.*) that it did not have to resolve these issues. It noted that "a bargaining order is in the nature of an equitable remedy" (*ibid.*); that an employer who "continues to act with disdain or disregard for this country's labor laws * * * presents the most cogent possible evidence that there could not be a free and fair second election" (*ibid.*); and that "[o]nly if the employer has clean hands can there be any reason to look at changed circumstances and determine whether they should affect the enforcement of the bargaining order" (*id.* at A5-A6). It then concluded that petitioner did not have such clean hands, noting that "unfair labor practices charges had been filed against [petitioner] after the Board issued its order in this proceeding," that "[t]hese charges were disposed of by a settlement stipulation providing for the entry of a Board Order and a Court Judgment enforcing that order," and that, while "the settlement stipulation * * * did not" include an admission that petitioner had violated the statute, it did include "an extensive order requiring compliance with the Act and providing for full and immediate reinstatement, and for any loss of earnings or other benefits suffered by reason of the discharging of three specific complainants in the proceeding" (*id.* at A6).[1] Having "reviewed in this

[1] The court was referring to the unfair labor practice charges underlying the complaint that the General Counsel filed against petitioner on March 5, 1987. This complaint, which is attached as an appendix to this brief, alleged that, on August 5, 1985, petitioner held a meeting at which its then-president, Joseph Koons: (a) promised to provide employees with raises and a pension plan if they abandoned their support for the Union; (b) solicited employees to persuade other employees to abandon their support for the Union; (c) informed employees that it would be futile to support the Union; (d) informed employees that petitioner would not bargain with the Union;

appeal the record in the other proceeding between the parties," the court was certain that "[petitioner] [could not] meet the 'clean hands' requirement" (*ibid.*). Accordingly, it held that "[i]t would be * * * a waste of judicial time to remand this cause to the Board to consider the 'clean hands' issue" (*ibid.*).

(e) solicited employees to decertify the Union as their collective-bargaining representative; and (f) offered to assist employees to decertify the Union (App., *infra*, 5a-6a). The complaint also alleged that, at the same meeting, Joseph Koons threatened employees with discharge if they engaged in union activities, and that other supervisory personnel threatened employees with discharge because of their union activity during the period January 15 through January 21, 1986 (*id.* at 6a). Finally, the complaint alleged that the discharges on March 30, 1986 of three employees—Ricky Kubert, Fred Pierson, and Joseph Smith—were due, inter alia, to their activities on behalf of the Union, including testifying in the unfair labor practice proceedings in the instant case (*id.* at 4a-5a).

The complaint was settled by a stipulation in which petitioner agreed to the entry of a Board order requiring it: (a) to cease and desist from engaging in the conduct alleged to have occurred at the August 5, 1985 meeting held by Joseph Koons; (b) to cease and desist from discharging or otherwise disciplining or discriminating against its employees because of their protected activity or because "they have filed charges or given testimony under [the Act]"; and (c) to offer reinstatement and certain sums of backpay to the three discharged employees (Pet. App. A11). The settlement stipulation contained a non-admission clause stating that "by entering [into] this Stipulation, [petitioner] does not admit it violated the [Act]" (*id.* at A13). Finally, the settlement provided that petitioner was waiving all defenses to the entry of a judgment by the appropriate court of appeals enforcing the Board's order (*ibid.*).

The Board approved this settlement on May 28, 1987, and entered the agreed-upon order (Pet. App. A19-A27). The court of appeals then enforced the Board's order on August 6, 1987 (*id.* at A28-A29).

ARGUMENT

The court below reached the correct result in this case. Its decision does not conflict with any decision of this Court or of any other court of appeals. Accordingly review by this Court is not warranted.

1. In *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, 613-614 (1969), the Court approved issuance by the Board of bargaining orders in both "exceptional" cases marked by "outrageous" and "pervasive" unfair labor practices and also "in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." A bargaining order may therefore issue "where there is a showing that at one point the union had a majority" and "the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order * * *" (*id.* at 614-615). In this case, the Board found that petitioner's unfair labor practices had dissipated a card majority and that the effects of the unfair labor practices could not be erased by traditional remedies (so that a fair election could be held). Accordingly, it is clear that a bargaining order would ordinarily be justified. See, *e.g.*, *NLRB* v. *Air Products & Chemicals, Inc.*, 717 F.2d 141, 144-147 (4th Cir. 1983); *Piggly Wiggly, Tuscaloosa Div.* v. *NLRB*, 705 F.2d 1537, 1540-1543 (11th Cir. 1983); *Chromalloy Mining & Minerals* v. *NLRB*, 620 F.2d 1120, 1130 (5th Cir. 1980); *NLRB* v. *Eagle Material Handling, Inc.*, 558 F.2d 160, 167-169 (3d Cir. 1977).

2. In the court below, petitioner contended (Pet. Br. 15-28) that a bargaining order was not justified because

of post-hearing turnover in employees and changes in management and ownership and that the Board had erred in issuing the bargaining order without reopening the record so that petitioner could adduce evidence of these post-hearing events. But, as the Board noted (Pet. App. A40 n.18), "the evidence sought to be adduced would not require a different result." "[A] substantial portion of the turnover occurred among [petitioner's] younger less skilled employees, while many of the older more skilled employees, who were the direct targets of many of the threats, are still employed"; "[t]he continued presence of these [and other] employees create[d] a potential that the inhibitive effect of the unfair labor practices [would] remain, preventing the possibility of a fair election" (*id.* at A41 (footnote omitted)). Moreover, the only significant change in management and ownership occurred when Joseph Koons succeeded his brother, John Koons, Jr., as the dealership's owner and president, and Joseph Koons did not disavow the prior coercive acts of petitioner's officials or communicate to the employees in the bargaining unit that he had taken steps to assure that their rights would be respected in the future. See C.A. App. 77-79, 82-85, 117-140. Accordingly, it was reasonable for the Board to conclude that, notwithstanding the alleged post-hearing events, a fair election was not possible and a bargaining order should still issue. See *NLRB* v. *Keystone Pretzel Bakery*, 696 F.2d 257, 265 (3d Cir. 1982); *Bandag, Inc.* v. *NLRB*, 583 F.2d 765, 772 (5th Cir. 1978); *NLRB* v. *Ace Comb Co.*, 342 F.2d 841, 844 (8th Cir. 1965); *Granite City Journal*, 262 N.L.R.B. 1153, 1158 (1982).

3. The court below rested its judgment, however, on the alternative ground that petitioner did not have "clean hands" warranting reopening the record to take evidence of post-hearing events, because in fact unfair labor practice charges based on alleged post-hearing events had been

filed against petitioner and settled by an order approved by the Board and enforced by the court. Even though the results below can stand on the grounds discussed by the Board, petitioner contends (Pet. 8-17) that this Court's review is warranted, because in relying on the settlement stipulation the court of appeals violated the established principle that a settlement agreement with a "nonadmission clause" may not be used to "impute guilt" to a party entering into that settlement. But the court below did not use the settlement agreement to "impute guilt" to petitioner. It merely concluded that the existence of a settlement, and the unfair labor practice charges underlying it, made it appropriate not to require a new evidentiary hearing to enable petitioner to show that post-hearing events had made a fair election possible. That conclusion was eminently sensible: the settlement did not insulate the post-hearing events from any possible consideration in connection with determining the appropriateness of a bargaining order. Petitioner argued below (Pet. Br. 26, 27) that a fair election could be held because "[t]he record does not reflect that [petitioner] has committed an[y] unfair labor practices since the accession of Joseph Koons" and is "devoid of any evidence tending to reveal any anti-union animus on the part of [petitioner's] current management." The court of appeals was not obliged to take that claim at face value when the settlement was a matter of record and the court knew that at any reopened hearing the claim of no "evidence * * * of anti-union animus" would be swiftly dashed.

4. Petitioner also suggests (Pet. 9, 18-20) that the decision below violates the principle of administrative law enunciated by this Court in *SEC* v. *Chenery Corp.*, 318 U.S. 80, 87 (1943), to wit, that the validity of agency action ordinarily must be judged solely by the grounds invoked by the agency. But the court here was not affirming

an exercise of agency discretion on grounds other than those that supporting the actual exercise of that discretion. It merely concluded that it was "obvious," on the basis of information it had before it, that further proceedings would be "a waste of judicial time" (Pet. App. A6). At worst, it might be said that the court gave excessive weight to the existence of post-hearing charges in concluding that a reopened hearing would be futile. That judgment, highly specific to this case, does not warrant this Court's review in this case, where the Board's conclusion was amply justified by the reasons it itself gave, and where the court of appeals' opinion is unpublished.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FRIED
Solicitor General

ROSEMARY M. COLLYER
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel
National Labor Relations Board

MARCH 1988

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD
REGION 5

Cases 5-CA-17683, 5-CA-17917, 5-CA-17933

KOONS FORD OF ANNAPOLIS, INC.

and

DISTRICT 65, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

AMENDED ORDER CONSOLIDATING CASES, AMENDED COMPLAINT, THIRD CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Upon a charge filed on December 11, 1985, in Case 5-CA-17683, by District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, herein called the Union, and upon a charge filed on January 21, 1986, amended on February 12, 1986, in Case 5-CA-17770, by the Union, an Order Consolidating Cases, Amended Complaint, Consolidated Complaint and Notice of Hearing issued on March 28, 1986, against Koons Ford of Annapolis, Inc., herein called Respondent; and upon a charge filed on March 17, 1986, amended on May 5, 1986, in Case 5-CA-17917, by the Union, and upon a charge filed on March 21, 1986, amended on May 5, 1986, in Case 5-CA-17933, by the Union, an Order Consolidating Cases, Amended Consolidated Complaint, Second Consolidated Complaint and Notice of Hearing issued on May 23, 1986, against Respondent; and upon an

Order issued March 2, 1987, by the Administrative Law Judge, severing Case 5-CA-17770 from the Order Consolidating Cases, Amended Consolidated Complaint, Second Consolidated Complaint and Notice of Hearing dated May 23, 1986, and granting leave to amend the complaint in Cases 5-CA-17683, 5-CA-17917 and 5-CA-17933; the General Counsel for the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned, pursuant to Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, and Section 102.15 and 102.17 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Amended Order Consolidating Cases, Amended Complaint, Third Consolidated Complaint and Notice of Hearing, and alleges as follows:

1. (a) The charge in Case 5-CA-17683 was filed by the Union on December 11, 1985, and a copy thereof was served by certified mail on Respondent on the same date.

(b) The original charge in Case 5-CA-17917 was filed by the Union on March 17, 1986, and a copy thereof was served by certified mail on Respondent on March 18, 1986.

(c) The first amended charge in Case 5-CA-17917 was filed by the Union on May 5, 1986, and a copy thereof was served by certified mail on Respondent on May 8, 1986.

(d) The original charge in Case 5-CA-17933 was filed by the Union on March 21, 1986, and a copy thereof was served by certified mail on Respondent on March 24, 1986.

(e) The first amended charge in Case 5-CA-17933 was filed by the Union on May 5, 1986, and a copy thereof was served by certified mail on Respondent on May 8, 1986.

2. (a) At all times material herein, Respondent, a Maryland corporation with an office and place of business in Annapolis, Maryland, herein called Respondent's facility, has been engaged in the retail sale and service of automobiles.

(b) During the preceding twelve months, a representative period, Respondent, in the course and conduct of its business operations described above in paragraph 2(a), derived gross revenues in excess of $500,000.

(c) During the period of time described above in paragraph 2(b), Respondent, in the course and conduct of its business operations described above in paragraph 2(a), purchased and received at its facility goods and materials valued in excess of $5,000 directly from points located outside the State of Maryland.

(d) Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, the following named persons have occupied the positions set forth opposite their respective names, and are now, and have been, supervisors of Respondent within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act:

Arthur W. Dawson	– Shop Foreman
Ronald L. Hendrick	– General Manager
Joseph R. Koons	– President
John L. Moore	– Service Manager
Henry D. Sparrow	– General Parts and Service Director

5. In or around February 1986, Respondent's employee, Joseph Smith, contacted the Maryland Occupational Safety and Health Administration (M.O.S.H.A.) regarding alleged safety problems at Respondent's facility, and on or about March 5 and March 19, 1986, Respondent's employees, Joseph Smith, Fred Pierson and Ricky Kubert, participated in a M.O.S.H.A. investigation and inspection at Respondent's facility.

6. On or about the dates listed below, Respondent, acting through Henry D. Sparrow, issued letters of warning to the employees named below:

Ricky Kubert – February 19, 1986, March 14, 1986, and March 20, 1986
Fred Pierson – March 14, 1986 and March 20, 1986
Joseph Smith – February 12, 1986, March 14, 1986, and March 20, 1986

7. On or about March 20, 1986, Respondent terminated its employees Ricky Kubert, Fred Pierson and Joseph Smith.

8. Respondent engaged in the conduct described above in paragraphs 6 and 7 because the employees named therein joined, supported or assisted the Union, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

9. Respondent engaged in the conduct described above in paragraphs 6 and 7 because the employees named therein gave testimony to the Board in Cases 5-CA-15050, 5-RC-11899, 5-CA-17683 and 5-CA-17917.

10. Respondent issued the warnings of March 14 and March 20, 1986, described above in paragraph 6, and engaged in the conduct described above in paragraph 7, because the employees named therein engaged in the

activity described above in paragraph 5, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

11. At or around noon on or about August 5, 1985, Respondent, acting though Joseph Koons in the upstairs conference room at Respondent's facility:

(a) promised employees raises and a pension plan if they abandoned support for the Union as their collective-bargaining representative;

(b) solicited employees to persuade other employees to abandon support for the Union as their collective-bargaining representative;

(c) informed employees that it would be futile to support the Union as their collective-bargaining representative;

(d) informed employees that it would not bargain with the Union as their collective-bargaining representative;

(e) solicited employees to decertify the Union as their collective-bargaining representative;

(f) offered to assist employees to decertify the Union as their collective-bargaining representative.

12. At or around 4:30 p.m. on or about August 5, 1985, Respondent, acting through Joseph Koons in the upstairs conference room at its facility, threatened employees with discharge if they engaged in protected concerted activities.

13. In or around the period between January 15 and January 21, 1986, the exact date being presently unknown to the undersigned, Respondent, acting through Arthur Dawson and Henry D. Sparrow, at its facility, threatened employees with discharge because of their activities in support of the Union by telling employees that Respondent wanted to get rid of all the troublemakers in the shop.

14. By the acts and conduct described above in paragraphs 6, 7, 10, 11, 12 and 13, and by each of said acts, Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

15. By the acts and conduct described above in paragraphs 6, 7 and 8, and by each of said acts, Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

16. By the acts and conduct described above in paragraphs 6, 7 and 9, and by each of said acts, Respondent has discriminated, and is discriminating, against employees for giving testimony under the Act, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (4) of the Act.

17. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

VISITORIAL CLAUSE

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 6 through 16, the General Counsel seeks an order providing that Respondent:

> Notify the Regional Director for Region 5, in writing, within 10 days from the date of this Order, what steps

have been taken to comply therewith. For the purpose of determining or securing compliance with this Order, the Board, or any of its duly authorized representatives, may obtain discovery from Respondent, its officers, agents, successors or assigns, or any other person having knowledge concerning any compliance matter, in the manner provided by the Federal Rules of Civil Procedure. Such discovery shall be conducted under the supervision of the United States Court of Appeals enforcing this Order and may be had upon any matter reasonably related to compliance with this Order, as enforced by the Court.

The General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices herein alleged.

PLEASE TAKE NOTICE that on a date to be determined, a hearing will be conducted in the Hearing Room, 4th Floor, Room 4200, Candler Building, 109 Market Place, Baltimore, Maryland, before a duly designated administrative law judge of the National Labor Relations Board on the allegations set forth in the above amended consolidated complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, Respondent shall file with the undersigned, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an answer to said amended consolidated complaint within fourteen (14) days from the service thereof, and that, unless Respondent does so, all of the allegations in the amended consolidated complaint shall be deemed to be admitted to be true and shall be so found by the Board. You

are also notified that, pursuant to said Rules and Regulations, Respondent shall serve a copy of its answer on each of the parties.

Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practices Cases, is attached.

Dated at Baltimore, Maryland this 5th day of March 1987.

(SEAL)

/s/ Louis J. D'Amico

LOUIS J. D'AMICO, Regional Director
National Labor Relations Board,
Region 5
Candler Building, 4th Floor
109 Market Place
Baltimore, Maryland 21202

Attachment

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